IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5847 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C
Versus
HARSHADRAI J DAVE

Appearance:
1. Special Civil Application No. 5847 of 2002
MR ASHISH M DAGLI for Petitioner No. 1
MR MB GANDHI for Respondent No. 1
MRS TRUSHA M GANDHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/02/2004

ORAL JUDGEMENT

The petitioner - Gujarat State Road Transport Corporation has filed this petition under Article 227 of

the Constitution of India to challenge the decision of Deputy Labour Commissioner, State of Gujarat, Ahmedabad passed while exercising jurisdiction under Section 33 (2) (b) of the Industrial Disputes Act, 1947 ("I.D. Act" for short). It has vide order dated 6th December, 2001 refused to accord approval to the decision/order made by the petitioner dismissing the respondent from its service.

2. The facts of the case can be stated as under :-

2.1. The respondent at the relevant point of time was working at Surendranagar Depot of the petitioner as Traffic Inspector. In the course of his service, it was found that he had committed certain acts of misconduct and irregularities. It was, therefore, decided to initiate departmental proceedings against him. He was served with the chargesheet dated 20th September, 1999, which was received by him on 8th October, 1999. The respondent gave his reply on 14th October, 1999 and, thereafter the hearing was fixed on 23rd April, 2001. He was served with the showcause notice dated 23rd June, 2001, which was received by him on 23rd June, 2001 and he replied to the notice on the very same date. The charges levelled against him were mainly on the line that he, as a Traffic Inspector, had permitted the driver of the buses not to go on duty only after receiving some monetary benefit from them. On the conclusion of all the aforesaid formalities, the disciplinary authority thought it fit to impose penalty of dismissal and passed order to that effect on 20th July, 2001. Necessary application was made by the petitioner to the Conciliation Officer of the Labour Commissioner under Section 33 (2) (b) of the I.D. Act for grant of approval. But for the reasons recorded in its aforesaid order, approval was not granted. It is this decision which is now under challenge in this petition.

3. Mr. Ashish Dagli learned advocate appearing for the petitioner has submitted that the finding arrived at by the Tribunal i.e. the Conciliation Officer is not in consonance with the material produced on record inasmuch as the petitioner had, during the departmental inquiry produced reliable and relevant evidence to establish the misconduct of the respondent. He has further submitted that while granting approval under Section 33 (2) (b) of the I.D. Act, the officer is only required to see whether requirements of that Section are complied with. However, according to Mr. Dagli in the instant case, the Tribunal has overstepped its jurisdiction and has entered into the merits of the case. Lastly, he has submitted

that the conclusion drawn by the authority i.e. the Commissioner, to the effect that principles of natural justice were not observed is also not proper. However, in the event, this Court came to the conclusion that no opportunity of hearing was granted to the respondent, the case can be remanded back with a direction to hold inquiry afresh.

3.1. As against that, Mr.M. B. Gandhi learned advocate appearing for the respondent has supported the order made under Section 33 (2) (b) of the I.D. Act and has further submitted that considering the fact that principles of natural justice were not complied with, the decision rendered by the Conciliation Officer is just and proper and no interference is called for by this Court. He has submitted that this Court has even gone to the extent holding that under Section 33 (2) (b) of the I.D. Act, the Conciliation Officer can interfered with the order of punishment and alter the same in accordance with the evidence on record and the nature of misconduct alleged against the delinquent. he has further submitted that even if it was held that in case it was required to be remanded back to the Inquiry Officer, no useful purpose would be served because the respondent has already retired from service on 31st August, 2002. In support of his contention Mr. Gandhi has placed reliance on the decision rendered by the learned Single Judge of this Court in the case of G.S.R.T.C. v. D.L. Patel reported in 2003 (1) G.L.R. at 348.

4. Having carefully gone through the record of this petition and having considered the rival submissions, it transpires that during the course of service at Surendranagar, the respondent who was chargesheeted for the alleged commission of certain acts of misconduct and, therefore, the petitioner had thought it fit to initiate departmental proceedings against him. At the inquiry, the respondent was permitted to take the service of the representative to defend his interest. It is the say of the respondent that the petitioner had not granted adequate opportunity to him either to cross examine the witness of the department or to examine his own witness in his defence. The said factual aspect is controverted by the petitioner stating that adequate opportunity was already afforded to the respondent, but he had chosen not to cross examine the witness of the department and, therefore, the petitioner was not at all fault. The record shows that apart from this controversy, several contentions were raised which were purely based on the facts of the case.

4.1. For the purpose of deciding an application under Section 33 (2) (b) of the I.D. Act, it will be necessary to first find out whether proper opportunity of hearing/defence was granted to the respondent. In the instant case, the respondent's say is that on 23rd April, 2001, he had remained present at 11:00 a.m. in the office of the Inquiry Officer. On that day, evidence of Mr. K.R. Makwana - Depot Manager was scheduled to be recorded. However, on account of some meeting of the officers of the petitioner, he was held-up and could not be available till 6:00 p.m. At that juncture, the respondent made a request to the Inquiry Officer to permit him to leave the office and the next date of hearing be granted to him. It appears that the meeting got over around 6:00 p.m. and thereafter, the evidence of Mr. Makwana was recorded. By that time, the representative of the respondent had already left the place. As against this, the version of the petitioner is that the respondent was present and so was the witness, but he did not cross examined on the ground that he wanted to change the representative. Be that as it may, the question remains that the respondent though he had remained present was not afforded adequate opportunity to cross examine the important witness like Depot Manager. Even if the version of the petitioner is taken to be true, it was incumbent upon the Inquiry Officer to give him proper opportunity to engage another representative and hearing should have been adjourned to another date. It is also clear from the record that on that very day, proceedings were closed and thereafter showcause notice before passing the impugned order was served on the respondent. It also appears from the record and in particular, the affidavit-in-reply filed by the respondent that on the very next date i.e. on 24th April, 2001, letter was addressed to the Divisional Controller by the respondent making a grievance that no opportunity was given to him, but that letter was also ignored. Ultimately, the order of dismissal came to be passed against him. In such circumstances, the Conciliation Officer was justified in holding that proper opportunity to defend his interest at the inquiry was not granted to the respondent. The impugned decision however, seems to have been passed mainly on the ground that the contention raised by the respondent is based on facts as well as law and Regulations that had been controverted by the petitioner. However, even this Court while going through the record of the petition is able to reach to the conclusion that there was complete violation of principles of natural justice. At the time of inquiry the respondent was not given any opportunity to effectively defend his case. In that view of the matter,

the decision of the Conciliation Officer is not required to be interfered with.

At this stage it may also be noted that this Court in the aforesaid decision has laid down that when the concerned Officer is found to exercise jurisdiction under Section 33 (2) (b) properly, this Court may not interfere with the same. At this juncture, the submission of Mr. Dagli that case be remanded back for fresh hearing cannot be accepted because now that the petitioner has retired from the service on 31st August, 2002, it will not be worthwhile to ask him to undergo the agony of facing departmental inquiry again. This is apart from the question whether such course is now permissible. However, in my opinion, that request of the learned advocate for the petitioner cannot be accepted.

In view of the aforesaid, the petition is dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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